

Remarks

Claims 1-15, 17-46, and 48-53 are now pending in this application. Claims 1-46 and 48-53 are rejected. Claims 16 and 47 have been canceled without prejudice, waiver, or disclaimer. Claims 1-2, 4-23, 25, 26, 28, 36, 38, 42, and 50-53 have been amended. No new matter has been added.

The rejection of Claims 50-53 under 35 U.S.C. §101 is respectfully traversed. Claim 50 has been amended and is submitted to be directed to statutory subject matter. Claims 51-53 depend, directly or indirectly, from independent Claim 50. For the reasons set forth above, Applicants respectfully request that the Section 101 rejection of Claims 50-53 be withdrawn.

The rejection of Claims 1-27 and 50-53 under 35 U.S.C §112, second paragraph, is respectfully traversed. Claim 16 has been canceled. Applicants have amended Claims 1, 2, 4, 5, 8-15, 17-23, and 50-53, and respectfully submit that Claims 1-5, 17-27, and 50-53 particularly point out and distinctly claim the subject matter which the Applicants regard as their invention. Accordingly, Applicants respectfully request that the section 112 rejection to Claims 1-27 and 50-53 be withdrawn.

The objection to Claims 28-46 and 48-49 is respectfully traversed. Applicants have amended Claims 28 and 42. Claims 29-41 and 49 depend, directly or indirectly, from independent Claim 28 and Claims 43-46 and 48 depend, directly or indirectly, from independent Claim 42. Accordingly, Applicants respectfully request that the objection to Claims 28-46 and 48-49 be withdrawn.

The rejection of Claims 28-35, 38-41, and 50 under 35 U.S.C. § 102(a) as being anticipated by Juedes et al. (International Publication No. WO 01/13261 A1) is respectfully traversed.

Applicants respectfully submit that Juedes et al. is not prior art under 35 U.S.C. § 102(a) because Juedes et al. do not have a publication date earlier in time than the effective filing date, December 30, 1999, of the above-referenced application. For 35 U.S.C. § 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application (MPEP 706.02(a)).

The publication date of Juedes et al. is February 22, 2001, which is not earlier in time than the effective filing date of the above-referenced patent application. Accordingly, Applicants respectfully submit that Juedes et al. is not prior art under 35 U.S.C.

§ 102(a). For the reasons set forth above, Claims 28-35, 38-41, and 50 are submitted to be patentable over Juedes et al.

For at least the reasons set forth above, Applicants respectfully request that the Section 102 rejection of Claims 28-35, 38-41, and 50 be withdrawn.

The rejection of Claims 1-27, 36-37, 42-46, 48-49, and 51-53 under 35 U.S.C. § 103(a) as being unpatentable over Juedes et al. is respectfully traversed.

Claim 16 has been canceled. Applicants respectfully submit that Juedes et al. is not prior art under 35 U.S.C. § 103(a) because Juedes et al. is not prior art under 35 U.S.C. § 102. A 35 U.S.C. 103 rejection is based on a 102(a), 102(b), 102(e) etc. depending on the type of prior art reference used and its publication or issue date (MPEP 2141.01). Before answering Graham's 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. 102. *In re Oetiker*, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992) (MPEP 2144.08). Accordingly, Applicants respectfully submit that before using Juedes et al. as a prior art reference under 35 U.S.C. § 103(a), Juedes et al. must be prior art under 35 U.S.C. § 102.

Applicants respectfully submit that Juedes et al. is not prior art under 102 because Juedes et al. is not prior art under 35 U.S.C. § 102(a), § 102(b), or § 102(e). Juedes et al. is not prior art under 35 U.S.C. § 102(a) because, as explained above, Juedes et al. do not have a publication date earlier in time than the effective filing date, December 30, 1999, of the above-referenced patent application. Accordingly, Applicants respectfully submit that Juedes et al. is not prior art under 35 U.S.C. § 102(a).

Juedes et al. is not prior art under 35 U.S.C. § 102(b) because Juedes et al. was not published more than one year prior to the date of application, December 30, 1999, for patent in the United States. Publications...must occur more than one year prior to the date of application for patent in the United States to bar a patent under 35 U.S.C.

102(b) (MPEP 2133). Juedes et al. was published on February 22, 2001, which is not more than one year prior to the date of application in the United States of the above-referenced patent application. Accordingly, Applicants respectfully submit that Juedes et al. is not prior art under 35 U.S.C. § 102(b).

Juedes et al. is not prior art under 35 U.S.C. § 102(e) because Juedes et al. is an international application that has an international filing date prior to November 29, 2000. If the international application has an international filing date prior to November 29, 2000, apply the reference under the provisions of 25 U.S.C. 102 and 274, prior to AIPA amendments: For WIPO publications directly resulting from international applications under PCT Article 21(2), never apply these references under 102(e) (MPEP 2136.03). Accordingly, Applicants respectfully submit that Juedes et al. is not prior art under 35 U.S.C. § 102(e).

Moreover, Juedes et al. may not be used to reach back an earlier filing date through a priority or benefit claim for prior art purposes under 35 U.S.C. 102(e). International applications filed prior to November 29, 2000 may not be used to reach back an earlier filing date through a priority or benefit claim for prior art purposes under 35 U.S.C. 102(e) (MPEP 2136.03). Juedes was filed on August 17, 2000, which is prior to November 29, 2000. Therefore, Juedes may not be used to reach back an earlier filing date, August 19, 1999, through a priority claim for prior art purposes under 35 U.S.C. 102(e). Accordingly, Applicants respectfully submit that Juedes et al. does not have a 102(e) date and therefore, is not prior art under 35 U.S.C. § 102(e). For the reasons set forth above, Claims 1-15, 17-27, 36-37, 42-46, 48-49, and 51-53 are submitted to be patentable over Juedes et al.

For at least the reasons set forth above, Applicants respectfully request that the rejection of Claims 1-27, 36-37, 42-46, 48-49, and 51-53 under 35 U.S.C. 103(a) be withdrawn.

In view of the foregoing amendment and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Thomas M. Fisher', written over a horizontal line.

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